HASHIM v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi C.J. (Malaya) September 26, 1966]

[K.L. — Selangor Criminal Appeal No. 38 of 1966]

Bribery and Corruption — Document containing false statement — Knowingly giving — Intent to mislead principal — Prevention of Corruption Act, 1961, s. 4(c).

Evidence — Estoppel — Evidence of witness who had been convicted — Whether witness can give evidence in a different case where he was not a party.

The appellant was found guilty on the charge that he "knowingly gave Chew Kim Joo who was an agent of the Government of the State of Selangor, to wit, a financial clerk in the District office, Ulu Langat a document, to wit, Indent No. 13/64 in respect of which the principal was interested and which document contains a statement which is false in material particular namely it stated that the work had been completed when in fact it had not been performed and which to your knowledge was intended to mislead the principal and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961." He appealed on a number of grounds, *inter alia*, that the prosecution failed to prove that the indent was false to the knowledge of the appellant, that the evidence of a certain witness should not have been admitted when he denied the issue of fact on which he was convicted by a court of competent jurisdiction, and that the indent which was the subject matter of the charge could not be regarded to come within the words "other document" in section 4(c) of the Act.

Held: (1) knowledge like intention is a question of fact which generally may be inferred from circumstances of the case: in this case on the facts the president rightly came to the conclusion that there was no intention on the part of the appellant to do any work at all on the land;

(2) the essence of issue estoppel or *res judicata* is that the issues must be between the same parties. This does not mean that when an accused person has been convicted in a trial in which he denied the charge and gave evidence contrary to the evidence for the prosecution he would not be allowed to give the same evidence in another case where he was not a party;

(3) it is not necessary to decide whether the words "other document" in section 4(c) of the Act should be interpreted *ejusdem generis* or not because in this case the second part of the document can be interpreted to come under the word "account". The gist of the offence was the falsity of that part namely by implication to the knowledge of the appellant that the work had been completed and subsequent order to pay to the appellant It was false because no work had in fact been done.

Cases referred to:—

(1) *Public Prosecutor* v. *Lee Siew Ngock* [1966] M.L.J. 225.

(2) *Mraz* v. *R.* (1956), 96 C.L.R. 62, 70.

(3) *Noor Mohamed* v. *R.* [1949] A.C. 192.

(4) *R.* v. *Ng Ng Cheong Hock* (1958), 2 M.C. 229.

MAGISTRATE'S CRIMINAL APPEAL.

Hussein Onn for the appellant.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Azmi C.J. (Malaya): The appellant was charged as follows:—

"That you on 6th April 1964 at District office, Ulu Langat, in the District of Ulu Langat, in the State of Selangor, knowingly gave Chew Kim Joo who was an agent of the Government of the State of Selangor, to wit, a financial clerk in the District Office, Ulu Langat, a document, to wit, Indent No. 13/64 in respect of which the principal was interested and which document contains a statement which is false in material particular namely it stated that the work had been completed when in fact it had not been performed and which to your knowledge was intended to mislead the principal and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961."

In view of the fact that some of the grounds of appeal are on questions of fact, it is necessary to refer in some detail to the facts of this case.

I will first refer to the evidence of P.W.3 Chew Kim Joo, the financial clerk in the District Office at the relevant time.

Chew said that in the month of April, the appellant came to his office with a slip of paper in the hand-writing of the District Officer Syed Ismail bin Syed Ahmad, and containing an instruction to Chew to issue an indent for the construction of a drain at Ulu Langat 30 chains long at $20 per chain and the indent was to be in favour of the appellant.

Chew accordingly made up an indent as instructed. The indent is exhibit P.3 and the office copy is exhibit P.3A. Chew handed the indent to appellant at appellant's request, for the purpose of getting the signature of the District Officer on it.

About half an hour later appellant brought back the indent with the District Officer's signature on it. Chew also noticed that there was an amendment on the indent in the hand-writing of the District Officer and initialled by him. The amendment was the substitution of the words "Lot No. 2773 to Sg. Langat." for the words "Sg. Langat". In other words the District Officer added the words "Lot No. 2773 to" to the indent.

Chew then handed exhibit P.3 to the appellant. About a week later appellant came back with exhibit P.3 and he found that the District Officer had on the indent authorized payment for the work, and that the penghulu had also certified on the indent that work had been completed.

Chew then prepared a payment voucher exhibit P.4 which he sent to the Treasury by post. Chew also said it was normal practice of the department that an office file should have been opened in respect of work to be done so that the indent itself should have on it the number of the file.

Witness was cross-examined as to who took the voucher to the District Officer for signature but he confirmed in re-examination that it was the appellant who brought back the voucher with the District Officer's signature on it.

I will now refer to the evidence of P.W.5, Raja Ahmad Shamsusah. He admitted signing exhibit P.3, but he said he did so because the District Officer asked him to do it, and that it was the District Officer who told him that the work referred to in the indent had been completed. He also said that the District Officer told him where the the work was. Then he signed the document. He went to the District Officer because Idris, the District Officer's clerk, called for him.

He denied that he ever asked the District Officer for this work, and he also said that he did not know who the appellant was, when he signed P.3. He did not inspect the land concerned before he signed P.3.

He also said that after he signed the document he saw Idris outside the District Officer's chambers and enquired of the clerk as to the identity of Hashim and when asked the reason witness explained to Idris that witness was asked by the District Officer to sign an indent for $600 in the name of Hashim bin Talib.

In answer to cross-examination he denied telling appellant that his cheque had arrived or that he told Chew he knew Hashim or where he lived, or that he would inform Hashim that the cheque had arrived. He also said that when he was called to sign P.3 he was under the impression that it was continuation of another work at the same place and that he signed P.3 because the District Officer asked him and that he was his superior officer, but admitted that the name of the contractor on P.3 was different from the other one. The indent in reference to the other work is D.7. He did not make enquiry as to the work supposed to have been done because the District Officer told him that the work had been completed and that it was done by his "biras"*. He admitted that in reference to the work in D.7 he had advanced $300 to the workers.

He admitted that he was convicted on a charge of abetting appellant and the District Officer and that on conviction after a trial he was bound over. He also said that he did not realise when he signed P.3 it was a false indent.

There was also evidence to the effect that land held under lot 2773 Dusun Tua is on the side of a hill and that no drain of any kind had been constructed there, and that it would be physically improbable that construction of a drain 4 ft. by 3 ft. by 3 ft. and 30 chains long could have been accomplished within a week employing the usual number of men by a contractor of that category.

Now as to the evidence of the appellant he said he was a sales representative of Federal Publications Ltd. Kuala Lumpur and his work necessitated a certain amount of travelling outside Kuala Lumpur. He said he remembered the indent P.3 and in reference to that he saw the District Officer one day and the District Officer mentioned to him of a minor work to be done at Ulu Langat where P.W.5 lived. The District Officer gave him a slip of paper with instructions to hand it over to Chew P.W.3. The appellant accordingly handed the chit to Chew and was asked to come again. He then went to Chew later and Chew handed him the indent P.3. He then saw the District Officer and then went on to say that the District Officer's signature was on the indent and there was no other signature on it. The purpose he saw the District Officer was to tell him that if he met P.W.5 he would tell him that he had got the contract. In the afternoon he met P.W.5 at the District Office who had been introduced to him previously but was not familiar with him. Appellant then said he realised he had some other urgent work in Johore so that he asked P.W.5 if he would do the work mentioned in the indent for him, and P.W.5 having read Ex. P.3 agreed to do it. Next day appellant went to Johore and 5 days later on the way back to Kuala Lumpur he stopped at Kajang. About two or three days later he met P.W.5 at the District Office and was informed by the latter that the work had been completed. Appellant said the indent had been in his possession all the time until he handed it to P.W.5. P.W.5 then left him and later came back with the indent and said he had signed it. The signature was dated 6th April 1964.

Then at P.W.5's request he saw the District Officer. He showed P.3 to him and at the same time told the District Officer that P.W.5 had signed the indent certifying that the work had been completed. The District Officer appeared to be very busy and asked appellant to leave the indent on his table. Appellant left the District Officer's chambers.

On 16th April 1964 appellant went to the District Office again and met P.W.5 then. P.W.5 informed him that the cheque had arrived and suggested that appellant go and get it. So together they went to see P.W.3, but P.W.5 waited outside. Appellant met P.W.3 and a cheque was handed to him and then appellant went out and saw P.W.5.

Appellant then having told him that he had the cheque asked P.W.5 about the payment of the workers and to which P.W.5 said that he would discuss this matter later. Unfortunately he had not got the opporutnity to see P.W.5 again.

The cheque was for $600. Appellant went to see the District Officer because he wanted to know whether the District Officer could give him cash for the cheque. Then appellant said "He (i.e. the District Officer) asked me to hold on —

* Relation by marriage (*e.g.* the relationship between two men who married two sisters) *Ed.*

to follow him to the bank. I received cash from the District Officer." In answer to cross-examination he admitted that his wife and the District Officer's wife were sisters. He also said he did not show the indent to P.W.3 after P.W.5 had signed it because he left the indent at the desk at the District Officer's office.

He also denied that he took the indent to P.W.3 for him to prepare the voucher. This evidence contradicts that of P.W.3. He also said that he did not know where P.W.5 signed the indent because P.W.5 took it away and after some time brought it back to appellant for appellant's signature.

He realised that the work had not been done, only about 13 or 14 days afterwards when the police went to see him. He also said he did not know whether a drain of 30 chains could be constructed within six days. He admitted he should have gone to see the place of work but he did not do so because he knew that P.W.5 would do it.

In his judgment the learned president found that Raja Shamsusah was an accomplice and as such he made up his mind that his evidence required corroboration.

In reference to the appellant's story, the learned president did not appear (1) to accept his explanation why he went to see the District Officer again with the indent, namely to tell the District Officer to tell the penghulu that he had got the job; (2) the learned president adversely commented on the appellant's hurry to make his claim; (3) and appellant's story that he passed the work to the penghulu, whom appellant could not have known well since he only came to know him since 30th March 1964; (4) as to appellant's evidence that he took the indent with him to Johore and (5) also appellant's failure to check if the work had indeed been done before making his claim.

On the other hand, the learned president found that Chew was a truthful witness. He thereupon found on the facts of the case that appellant did knowingly give to Chew the indent, which according to the president, contained a statement which was false in material particular, in that it stated that the work had been completed when in fact it was clear from the prosecution story that it had not been performed at all. And he also held that the appellant knowingly gave the indent to Chew with the intention to mislead the agent to the State of Selangor. Thereupon the learned president found the appellant guilty.

I will now deal with the grounds of appeal (i), (ii), (iv) and (v) of paragraph 4. Under these grounds Che Hussein urged firstly that the prosecution had failed to prove that the indent was false to the knowledge of the appellant. He referred to the evidence of P.W.3, and discrepancies in that evidence. He then referred to evidence of P.W.6 and submitted that this man is not reliable.

In fact, as I understood him, his contention was that the appellant was not aware that the work had never been done and that he trusted P.W.5 who was unworthy of credit. Che Hussein also said that the prosecution evidence to show that appellant knew that the indent was false was that of the penghulu alone because he maintained that the evidence of Chew P.W.3 did not prove that the appellant had knowledge the indent was false nor did the evidence of Idris corroborate the evidence of the penghulu.

These grounds of appeal are mainly on questions of fact. Firstly as to the failure on the part of the prosecution to prove that the indent was false to the knowledge of the appellant. Knowledge like intention is a question of fact which generally may be inferred from circumstances of the case. Apparently the learned president did not accept the appellant's explanation as to why he made his claim. I myself feel that the fact that appellant failed to make proper arrangements for the work to be done and also that he did not make proper inquiry whether it had been done are facts upon which the learned president would have come to the conclusion that there was no intention on the part of the appellant to do any work at all on the land. He even did not know where the area was and therefore the nature of his undertaking for which he readily undertook for a payment of $600. There was again the fact that no attempt had been made to pay the penghulu. If indeed the penghulu had stated that the work had been done, I feel sure that he would not agree to put off this question so readily as alleged by the appellant. There should at least have been a discussion as to the amount to be settled with the workers.

For the above reason I feel disinclined to interfere with the finding made by the learned president and I would therefore dismiss these grounds of appeal.

As to ground 4(vi), it was urged that the evidence of the penghulu P.W.5 should not have been admitted when he denied the issues of fact on which he was convicted by a court of competent jurisdiction. In support of his argument Che Hussein read passages to me from the judgments of McIntyre J. in *Public Prosecutor* v. *Lee Siew Ngock,*[1] and also from the judgment in the case of *Mraz* v. *The Queen* [2] and *Noor Mohamed* v. *The Queen,*[3] I am unable to see how the principles enunciated in the above cases would prevent in law in the present case, P.W.5 from giving the same evidence which he gave in his own trial. In *Lee Siew Ngock's* case the question was whether the accused could be

charged and tried again on an issue substantially dealt with in his previous trial. I also think that the essence of issue estoppel or *res judicata* is that the issues must be between the same parties. I do not think that the authorities cited by Che Hussein is an authority for saying that when an accused person has been convicted in a trial in which he denied the charge and gave evidence contrary to the evidence for the prosecution he would not be allowed to give the same evidence in another case where he was not a party. I would therefore dismiss this ground of appeal.

The last ground 4(vii) where he urged that the indent, the subject matter of the present charge, cannot be regarded to come within the words "other document" in section 4(c) of the Act. In my view the proper way of considering this point is to discover from the examination of the document itself what document it is.

I see that exhibit P.3 contained two parts namely:—

(i) An order or a request to the appellant to do certain work, the indent proper.

(ii) A certificate by the penghulu to the effect that the work had been done.

As I understand the charge against the appellant it was that second part which was the subject of the charge, namely to the effect that he had completed the work when in fact he had not done so. This part also authorized payment due for the work that had been done or supposed to have been done. In my view therefore it is not necessary to decide whether the words "other document" should be interpreted *ejusdem generis* or not because in my view, that second part of the document can be interpreted to come under the word "account". The gist of the offence is the falsity of that part namely by implication to the knowledge of the appellant that the work had been completed and subsequent order to pay $600 to the appellant. It is false because no work had in fact been done. For the above reasons I also dismiss this ground of appeal.

The appeal is dismissed and the conviction confirmed.

As to sentence Che Hussein asked me to consider as to the fact that the charge had been hanging over appellant for over two years and appellant had a clean record. For the prosecution Mr. Ajaib Singh referred me to the case of *R.* v. *Ng Ng Cheong Hock*,[4] where the court in that case held the view that in considering sentence the interests of justice and that of the public should be considered. In my own view in a case of this nature, unless there are very special reasons a sentence of imprisonment would be a proper one. In this case the sentence passed by the president was six months. In all the circumstances of the case I do not feel inclined to alter that. I would also dismiss the appeal against sentence.

Appeal dismissed.

Solicitors: *Skrine & Co.*

SHANGHAI HALL LTD. v. CHONG MUN FOO & ORS.

[O.C.J. (Raja Azlan Shah J.) November 16, 1966]

[K.L. — Civil Suit No. 1352 of 1965]

Company Law — Directors — Whether can have interest in rival company — Disclosure of rival interest — Inducing breach of contract by employees to benefit rival company.

Practice and Procedure — Statement of claim — Striking out — Whether cause of action was disclosed — R.S.C. O. 25, r. 4 — Amendment.

This was an application by the defendants to strike out the statement of claim under O. 25 r. 4 of R.S.C., 1957. The plaintiffs are an incorporated company carrying on the business of a restaurant and bar. The defendants, while being directors of the plaintiff company, promoted a rival company carrying on a similar business on the mezzanine floor immediately below the plaintiffs. The plaintiffs alleged breach of director's duty of disclosure of interests in the rival company. Paragraph 7 of the statement of claim alleged that the 1st defendant as managing director of the plaintiff company induced the staff of the plaintiffs to terminate their contracts of service with the plaintiffs and as a result about 25 employees of the plaintiffs resigned from their service. The articles of association of the plaintiff company did not prohibit its directors from becoming directors of a rival company but stipulated that a director must disclose the nature of any interest he may have in any contract or arrangement with any other company.

Held: (1) in the absence of a prohibition appearing in the regulations of the company a director of the company may become a director of a rival company. Since the articles of association of the plaintiff company had not prohibited its directors from becoming directors of a rival company and as the defendants had not entered into a business contract or arrangement with the plaintiff company they had not committed a breach of directors' duty;

(2) paragraph 7 of the statement of claim, though unhappily worded, disclosed the cause of action of procuring or inducing a breach of contract or interfering with contractual obligations against the first defendant. It also raised issues of fact which required to be determined on evidence and inferences therefrom by the trial judge;

(3) the action against the defendants based on paragraph 7 should proceed to trial with leave to amend the paragraph.

Cases referred to:—

(1) *Wenlock* v. *Moloney* [1965] 1 W.L.R. 1238 at 1243.

(2) *London and Mashonaland Exploration Co. Ltd.* v. *New Mashonaland Exploration Co. Ltd.* [1891] W.N. 165.

CIVIL SUIT.

Morris Edgar and *T. K. Tang* for plaintiffs.